

REMARKS

This is in response to the Office Action of June 15, 2009. Claim 1 is amended, based upon such disclosure as that found in lines 5-7 on page 11 of the specification. The “free organopolysiloxane” in amended claim 1 means an organopolysiloxane in free form and not bound to other substances. It is apparent from the statement on page 11, lines 5-7 of the specification, and from Examples 1-5 in the specification, that the organopolysiloxane of the formula (1) is used alone in the form of a dispersion or a solution¹. Support for new claim 30 is found in Examples 1-5 of the specification. No new matter is introduced by this Amendment. Claims 1-3, 5-8, 29, and 30 are now pending in the application.

Rejections under 35 U.S.C. §103

Claims 1-3, 5-8, and 29 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Tetsuo (EP 1065234 A2) in view of Nomura (UK 2138845). Office Action, pages 3-9. The rejection of record is respectfully traversed.

The cosmetic material of Tetsuo does not contain any significant amount of organopolysiloxane in free form. This is evidenced by the ‘Declaration under 37 C.F.R. § 1.132’ enclosed herewith. The organopolysiloxane is bound to the surface of the powder in Tetsuo; it does not exist in free form.

The superior effects – for instance, in easiness to comb, moisturizing effect, softening effect, and gloss – provided by using Hair Treatment Agent (A) according to the present invention as compared to using Hair Treatment Agent (8) according to Tetsuka as shown in Table 2 in the Declaration dated August 22, 2008 come from the presence of an organopolysiloxane in a free form in Applicants’ Hair Treatment Agent (A). The Examiner contends in the Office Action that the data in the Applicants’ Declaration dated August 22, 2008 are subjective and not persuasive of unexpected results. However, the evaluation of hair in the Declaration was conducted by five female panelists and rated according to the criteria

¹ The Examiner is respectfully reminded that the statutory description requirement may be met even if language in a claim does not appear in the specification. The specification need not describe the invention in exactly the same terms as used in the claims to comply with the written description requirement. It must simply indicate to persons skilled in the art that, as of the filing date, the applicant invented what is now recited in the claims. *All Dental Prodks LLC v. Advantage Dental Products Inc.*, 64 USPQ2d 1945 (Fed. Cir. 2002).

described on page 33, line 5 through page 34, line 2 of the present specification. Thus the data in the previously filed Declaration – which are evaluated by five female panelists and rated properly – are considered to be objective.

Tetsuo does not teach or suggest treating hair with an organopolysiloxane in free form. Such superior effects provided by the present method compared with a method in which the surface treated powder according to Tetsuka is used are not expected based upon anything in the Tetsuka disclosure and/or the knowledge available to persons skilled in the art.

Applicants respectfully submit that the inventions of claims 1-3, 5-8, 29, and 30 are not obvious over Tetsuo in view of Nomura because Nomura likewise does not teach or suggest use of organopolysiloxanes of the formula (1) in free form for treating hair.

Conclusion

All of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider all presently outstanding rejections and that they be withdrawn. It is believed that a full and complete response has been made to the outstanding Office Action, and as such, the present application is in condition for allowance.

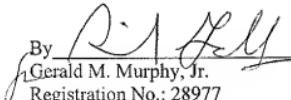
In view of the above amendment, Applicant believes the pending application is in condition for allowance.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Richard Gallagher, Registration No. 28781, at the telephone number of the undersigned below to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Director is hereby authorized in this, concurrent, and future replies to charge any fees required during the pendency of the above-identified application or credit any overpayment to Deposit Account No. 02-2448.

Dated: November 16, 2009

Respectfully submitted,

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Enclosure: Declaration under 37 CFR 1.132